
United States
Circuit Court of Appeals
For the Ninth Circuit

W. L. CASEY and AGNES CASEY, <i>Appellants,</i>	}	No. 12287
vs.		
R. MAX ETTER and WILLIAM E. CULLEN, <i>Appellees.</i>	}	

Reply Brief of Appellants

*On Appeal From the District Court of the United
States for the District of Idaho,
Northern Division*

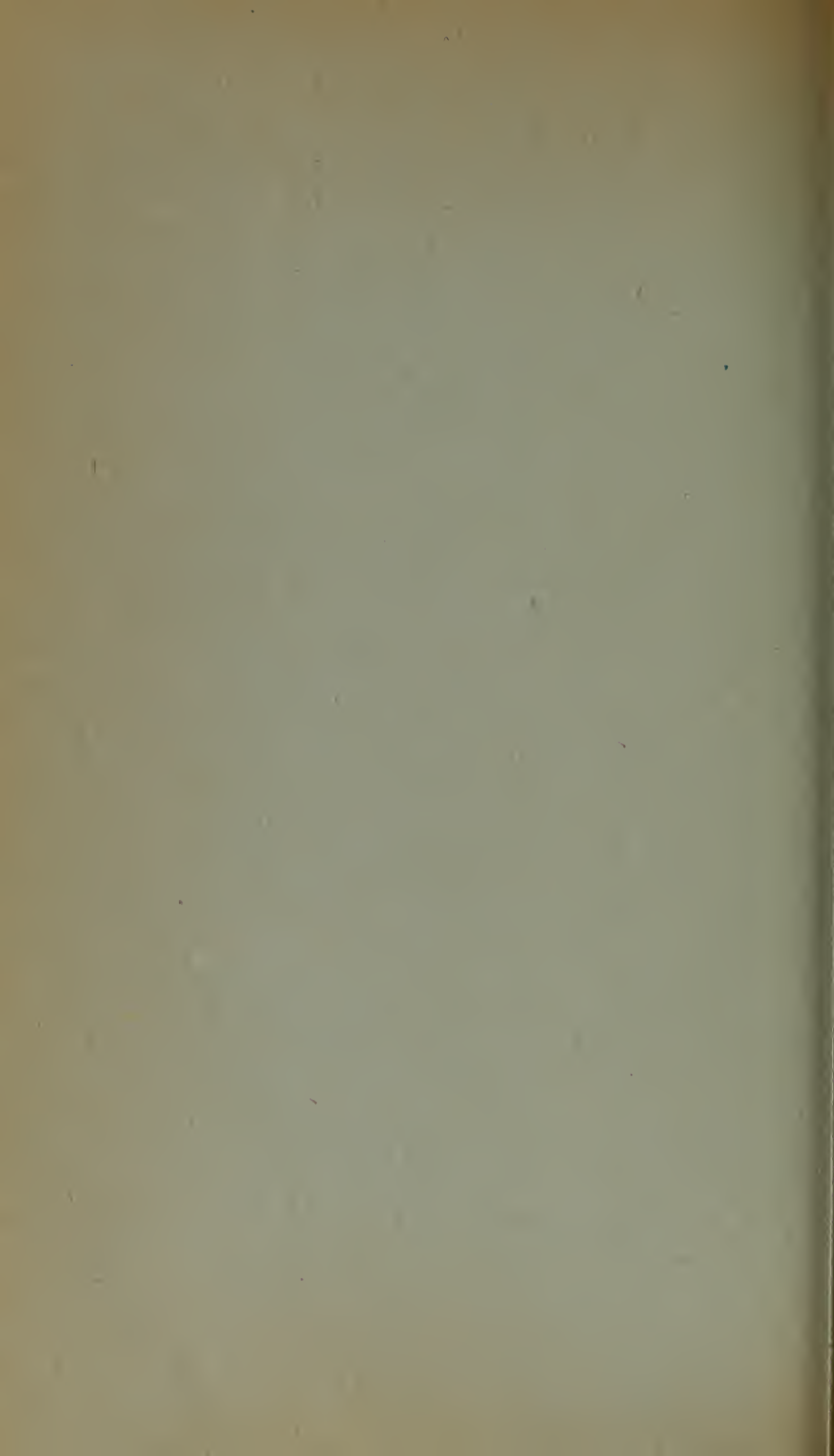
HON. CHASE A. CLARK, *Judge*

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PAUL P. O'BRIEN,



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APPELLEES MISSTATE FACTS

Appellees say, page 4 their brief: "Casey recovered approximately \$70,000.00." And again at page 8 thereof, they say: "Casey accepted the benefits of the legal services of Cullen and Etter by receipt and retention of benefits to the extent of about \$70,000.00." We are not given the benefit of having pointed out to us that portion of the record establishing such fact. Our search of the record reveals no evidence substantiating the above quoted assertion.

The undisputed facts to which we direct your attention render such statement an absurdity. Appel-

lants had no stock interest in Sulphur Springs except 2,500 shares which were given to appellant, Casey, in order to qualify him to sit as a director of that corporation (Tr. 146). Appellants loaned to Sulphur Springs \$15,000.00 upon which there was a balance of \$14,000.00 due. This loan was secured by 23,500 shares of Sulphur Springs stock (Tr. 151).

Q. You turned over 23,000 shares of stock pledged as security for the balance of \$14,000.00?

A. That's right (Tr. 168).

In narrating his financial transactions with Sulphur Springs, appellant Casey's testimony, which is not disputed and which for your convenience we set forth here, establishes the erroneous statements of appellees above referred to.

Q. What did you do when you got to Billings?

A. I first got hold of Anderson Brothers who had a contract for mining the gypsum and then got hold of Mr. Sinton, who was putting up the money to get our deal put over. The Company said they wouldn't make the deal until they got my contract of distribution, and warehouses and machinery and equipment at Thermopolis that the Company owned.

Q. Did you arrive at a figure as to what you would take for your interest including the sales contract?

A. Yes, sir, I did.

Q. What in addition to the sales or distribution contract did you agree to yield up?

- A. Mortgage on the equipment that I had from Anderson Brothers at the time it was about \$23,000.00 that I had a mortgage for.
- Q. With respect to the mortgage, what was the value of the equipment that you had a mortgage on?
- A. That equipment was sold to Mr. George Sinton for seventy-one thousand dollars.
- Q. That mortgage is in evidence now?
- A. Yes, sir.
- Q. There was a balance of \$23,000.00 on it?
- A. \$23,698 balance on the mortgage.
- Q. The sales contract or the distribution contract, what was the value of that, in your opinion?
- A. The value of that at that time I would say was \$65,000.00 or \$70,000.00.
- Q. Did you have some stock of the Sulphur Springs Gypsum Company?
- A. Yes, sir, I also had a \$15,000.00 note on which there had been about a thousand paid, leaving a balance of \$14,000.00 for which I had to put up as security 23,500 shares of Sulphur Springs Gypsum stock.
- Q. Were you required as a part of the transaction to yield up that note and stock?
- A. Yes, sir.
- Q. What else did you yield up as a part of the consideration for what you were to be paid?

A. For a number of years I had dealers' advertising contract—sales book contracts for the dealers that I turned over to them.

Q. Were these properties required to be delivered from you to the new buyer?

A. That's right, they were (Tr. 150-151).

And again on cross-examination, appellant Casey testified, which testimony is not disputed, as follows:

Q. That is all the money you got?

A. That was all—

Q. —just a moment, Mr. Casey, that is all the money you got for the Wyoming Mineral Products Company or in the name of Casey?

A. \$40,000.00, the \$23,000.00 and the notes; \$40,416 cash was every dime I got out of it (Tr. 167).

A benefit was not conferred upon appellants. They were not unsecured creditors of Sulphur Springs. Aside from the item of \$14,000.00 the remainder of what they received as a result of the sale of Sulphur Springs was derived from the sale of all of the assets of the Wyoming Mineral Products Company, a corporation which appellants owned, and the payment to them or that company of a balance of approximately \$23,000.00 due on a mortgage indebtedness. As appears from the record (Tr. 140, 144, 150), which again is not disputed, the business of the Wyoming Mineral Products Company was reasonably worth in excess of \$60,000.00. The selling franchise which the Wyoming Min-

eral Products Company had was of great value providing as it did for substantial royalties (Tr. 139, 144, Ex. 16).

The transaction insofar as appellants were affected, reflects simply a sale of substantial properties and securities by them to a purchaser who was secured by Adams to buy the same in the performance of the contract, Exhibit 5-15. Such sale was conducted by appellant Casey in conformity with the terms of the option agreement, Exhibit 6.

DAVIS-KIENHOLZ TESTIMONY

At page 7, appellees' brief, your attention is invited to the testimony of Frank H. Davis and Albert Kienholz. These two witnesses were stockholders of Sulphur Springs. They owned no properties other than their stock holdings. Their testimony at most amounts to a relation of conversations antedating the written contract, Exhibits 5-15, with liberal sprinkling of conclusions not founded on evidence.

We respectfully submit that the appellants should be sustained in their contentions.

Respectfully submitted,

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